

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES CARL KELLY,
Plaintiff,

v.

T. ALLEN, et al.,
Defendants.

Case No. [23-cv-00966-JST](#)

**ORDER SUA SPONTE GRANTING
EXTENSION OF TIME TO FILE
AMENDED COMPLAINT**

Plaintiff, an inmate housed at Kern Valley State Prison, has filed a *pro se* action pursuant to 42 U.S.C. § 1983. For the reasons set forth below, the Court *sua sponte* GRANTS Plaintiff an extension of time to February 17, 2025 to file an amended complaint.

DISCUSSION

On October 22, 2024, the Court reopened this action and dismissed the complaint with leave to amend. ECF No. 18. The Court ordered Plaintiff to file an amended complaint that addressed the identified deficiencies by November 19, 2022, or the action would be dismissed without further notice to Plaintiff. *Id.* The Court's October 22, 2024 Order was sent to Plaintiff's address of record, which lists him as housed at California State Prison – Sacramento. *Id.* There is no indication that Plaintiff did not receive this Order, *i.e.*, this Order was not returned to the Court as undeliverable to Plaintiff at California State Prison – Sacramento.

On November 26, 2024, the Court sent Plaintiff a courtesy copy of the Court's October 22, 2024 to Plaintiff at Kern Valley State Prison, as a review of the California Department of Corrections and Rehabilitation ("CDCR")'s inmate locator indicated that Plaintiff is currently housed at Kern Valley State Prison.

On December 20, 2024, the Court docketed a letter from Plaintiff wherein he stated that he

1 has been unable to access the law library. ECF No. 19. Plaintiff has also requested a status update
2 regarding two other cases – a habeas action and civil rights action – that he claims he e-filed with
3 this Court in November 2024. *Id.* Plaintiff also stated that “this Monday 12-16-2024 I will be e-
4 filing too (sic) more concerns me not getting to the law library to file about my Eight (sic)
5 Amendment rights being violated. Also I will re-e-file these too (sic) am talking about.” *Id.*

6 In light of Plaintiff’s representation that he is unable to access the law library, the Court
7 *sua sponte* GRANTS Plaintiff an extension of time to February 17, 2025 to file an amended
8 complaint that addresses the deficiencies identified in the Court’s October 22, 2024 Order. The
9 amended complaint must include the caption and civil case number used in this order, C No. 23-
10 cv-00966 JST (PR) and the words “AMENDED COMPLAINT” on the first page. Failure to file
11 an amended complaint in the time provided will result in dismissal of this action without further
12 notice to Plaintiff. Plaintiff has been granted three months to file an amended complaint. The
13 Court will not grant any further extensions of time to file the amended complaint unless Plaintiff
14 makes a showing of good cause.

15 With respect to Plaintiff’s request for a status update, the Court informs Plaintiff as
16 follows. The Court has not received any e-filings or filings by e-mail from Plaintiff. The Court
17 did not receive any filings from Plaintiff, whether by postal mail or e-mail, from Plaintiff in
18 November 2024. In December 2024, the Court received from Plaintiff via postal mail two civil
19 rights complaints and one habeas action. Pursuant to these filings, the Court opened the following
20 cases: C No. 24-cv-9429 EMC, *Kelly v. Custer, et al.* (habeas petition, received by the Court via
21 postal mail on December 20, 2024); C No. 24-cv-9430 JST, *Kelly v. Custer, et al.* (civil rights
22 action, received by the Court via postal mail on December 20, 2024); C No. 24-cv-0048 JST,
23 *Kelly v. Oglesby, et al.* (civil rights action; received by the Court via postal mail on December 31,
24 2024).

25 CONCLUSION

26 For the foregoing reasons, the Court ORDERS as follows.

27 1. The Court GRANTS Plaintiff an extension of time to February 17, 2025 to file an
28 amended complaint that addresses the deficiencies identified in the Court’s October 22, 2024


Order. The amended complaint must include the caption and civil case number used in this order, C No. 23-cv0-00966 JST (PR) and the words "AMENDED COMPLAINT" on the first page. Failure to file an amended complaint in the time provided will result in dismissal of this action without further notice to Plaintiff. The Court will not grant any further extensions of time to file the amended complaint unless Plaintiff makes a showing of good cause.

2. N.D. Cal. Local Rule 3-11 requires parties, including Plaintiff, to promptly keep the Court informed of any change of address. Failure to do so may result in the dismissal of this action pursuant to N.D. Cal. L.R. 3-11 or for failure to prosecute pursuant to Fed. R. Civ. P. 41(b). Plaintiff must file a notice of change of address in every pending case every time he is moved to a new facility. The Court sends orders only to the address of record. It is not the Court's responsibility to determine whether a litigant has changed his or her mailing address.

3. In the interest of justice, the Clerk is directed to send a courtesy copy of this order to Plaintiff at Kern Valley State Prison.

IT IS SO ORDERED.

Dated: January 9, 2025


JON S. TIGAR
United States District Judge